IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1306 OF 1986

Shri Ishwara Sheku Nangare since deceased by heirs

1. Shri Mahadeo Ishwara Nangare aged about 38 years.
2. Shri Bhagatsingh Ishwara Nangare aged about 47 years.
3. Shri Chhagan Ishwara Nangare aged about 44 years.
4. Shri Madhukar Ishwara Nangare aged about 42 years.
5. Shri Ananrao Ishwara Nangare aged about 32 years.
6. Shri Arun Ishwara Nangare aged about 26 years.
7. Smt. Shantabai Suryappa Gawade aged about 50 years.
8. Sou. Sajakka Rajaram Gorad aged about 25 years.
9. Sou. Rajakka Dattatraya Waware aged about 25 years.
10. Smt. Banabai Ishwara Nangare aged about 65 years.

Nos.2 to 10 through their power of attorney holder No.1 herein i.e. Shri Mahado Ishwara Nangare R/o Ghunaki, Taluka Hatkanangale District Kolhapur. ..Petitioners

Versus

Shri Vishwasrao Dattajirao Ingale since deceased by heirs

1. Shri Ranjit Vishwasrao Ingale
2. Shri Ajit Vishwasrao Ingale
3. Shri Amar Vishwasrao Ingale

4. Shri Vijay Vishwasrao Ingale
All R/o Kagal Taluka Kagal
Dist: Kolhapur.
5. Kalpana Shashikant Desai
R/o C.R.E.C. Building Flat No.6
Mangur Hill Vasko, Goa.
6. Jaymala Subhash Patil
R/o Sai Vasant Colony,
Dist: Sangli (Market Yard)
Dist: Sangli.
7. Manjiri Mansingh Desai
R/o C.R.Inci, Building Flat
No.6, Mangur Hill Vasco,
Goa.
8. Shyamala Jaysinghrao Garud
R/o Flat No.9, Pantaman Near
Sarada Mills, Ahmednagar.
9. Padmashri Pravinsinha Ranavre
R/o Mau Naikwadi Gangavesh
Kolhapur, Dist: Kolhapur.
10. Vinita Vijaysinha Chavan (Patil)
R/o C/o. P.G. Patil (Chavan)
New Goods Road Belgaum
Karnataka State. Belgaum.
11. Smt. Suvarnaman Vishwasrao Ingale
since deceased by heirs

11a) Shri Ranjit Vishwasrao Ingale
11b) Shri Ajit Vishwasrao Ingale
11c) Shri Amar Vishwasrao Ingale
11d) Shri Vijay Vishwasrao Ingale
All R/o Kagal, Tal. Kagal,
Dist. Kolhapur.
11e) Kalpana Shashikant Desai
R/o Plot No.58, Shramik
Sahakari Griha Nirman Sanstha
Kagal, Dist. Kolhapur.
11f) Jaymala Subhash Patil
R/o Sai Vasant Colony,
Market Yard Sanfli Dist:Sangli.
11g) Manjiri Mansingh Desai
C.R. Inci. Building, Flat No.6
Mangur Hill Vasco, Goa.
11h) Shyamala Jaysingrao Garud
Flat No.9, Pattaman Near Sarada
Mills, Ahmednagar.
11i) Padmashir Pravinsinha Ranavre

R/o Mau Naikwadi Gangavesh Kolhapur, Dist: Kolhapur.
11j) Vinita Vijaysinha Chavan (Patil) C/o P.G. Patil (Chavan) New Goods Road Belgaum, Karnataka State, Belgaum. ..Respondents

Mr. S.G. Karandikar h/f Mr. V.B. Rajure for petitioners.
Mr. S.V. Sadavarte for respondent nos.2,3,6 and 10 and 11a to 11j.
Respondent nos.1,4,7,8 & 9 served.
W.P. stands dismissed as against respondent no.5.

WITH
WRIT PETITION NO. 284 OF 1987

Shri Vishwasrao Dattajirao Ingale
since deceased by his heirs

a) Smt. Suvarnamala Vishwasrao Ingale
b) Shri Ajit Vishwasrao Ingale
c) Shri Ranjit Vishwasrao Ingale
d) Shri Amar Vishwasrao Ingale
e) Shri Vijay Vishwasrao Ingale
f) Mrs.Kalpana Shashikant Desai
g) Mrs.Jaymala Subhash Patil
h) Mrs. Manjiri Mansingh Desai
i) Mrs.Shyamala Jaysinghrao Garud
j) Mrs.Padmashri Pravinsinha Ranavre
k).Mrs.Vinita Vijaysinha Chavan (Patil)

R.Nos.a,b,d,e R/o Kagal New Colony, 1374 A, Kolhapur.
R.No.c R/o Phaltan, Yasin Bagwan Chawl, Panch Batti Chowk, Kasaba Peth, Dist: Satara.
R.No.f & h R/o Goa, CREC Bldg, Plot No.6 Mangoor Hill, Vasco, Goa
R.No.g R/o Sangli, Saikripa Bungalow, Vasant Colony, Market Yard, Sangli.
R.No.i R/o Ahmednagar, Plot No.9, Penta Mala, Near Sarda Mill,

Behind Kothi, Ahmednagar.
R.No.j R/o Kolhapur, Bhau Naikwada,
Gangavas, Kolhapur.
R.No.k R/o Belgaum, C/o P.C. Chavan-
Patil, New Goods Shed Road,
Belgaum. .. Petitioners

Versus

Shri Ishwar Sheku Nangare
since deceased by his heirs

1A. Smt. Banabai Ishwar Nangare
1B. Bhagatsingh Ishwar Nangare
1C. Shri Chagan Ishwar Nangare
1D. Shri Madhukar Ishwar Nangare
1E. Shri Mahadeo Ishwar Nangare
1F. Shri Ananda Ishwar Nangare
1G. Shri Arun Ishwar Nangare
All residing at Ghunaki,
Taluka Hatkanangale,
District Kolhapur. ..Respondents

Mr. S.V. Sadavarte for petitioners.
Mr. S.G. Karandikar h/f Mr. V.B. Rajure for respondent nos.1A to 1G.

CORAM: B.H. MARLAPALLE, J.

Date : June 20, 2006.

ORAL JUDGMENT:

1. Both these petitions filed by the tenant and landlord respectively impugned the same order passed by the Maharashtra Revenue Tribunal on 26/8/1985 in Revision Application No. 139 of 1983, whereby the said revision was partly allowed.

2. Agricultural lands admeasuring 5 acres and 5 gunthas in total from two different survey numbers, namely, Survey Nos.264/2 and 265/2 of village Ghunaki in Taluka Hatkanangale of Kolhapur District were the Patil Inam lands and granted to Shri Vishwasrao Dattajirao Ingale of village Ghunaki. Shri Ishwara Sheku Nangare was the tenant cultivating the said land as on 1/4/1957 and as at present the land is part of one single Block No.1017-E. As the lands were Inam lands, the proceedings for statutory purchase of the land by the tenant could not be instituted and more particularly under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short the Tenancy Act). However, the Maharashtra Revenue Patels (Abolition of Office) Act, 1962 was enacted and the Patel Inam was abolished under Section 3 of the said Act. They were resumed by the State Government on 1/1/1963 which was the appointed day under Section 8 of the Maharashtra Revenue Patels (Abolition of Office) Act, 1962 (for short Inam Abolition Act). Sometimes in the year 1975 the tenant approached the Additional Tahasildar and ALT, Hatkanangale with an application to initiate proceedings under Section 32G

of the Tenancy Act and these proceedings were dropped by the said officer on the ground that the land was not re-granted and it continued to vest in the State Government, though the tenant was cultivating the land. The tenant, therefore, went in appeal before the Special Land Acquisition Officer, Kolhapur, who was pleased to dismiss the appeal on 6/3/1978 and his Revision Application was also dismissed by the Maharashtra Revenue Tribunal on 22/3/1979. Thus, the ALT, the Special Land Acquisition Officer and the Maharashtra Revenue Tribunal concurrently held that the land was not re-granted to the Inamdar or to anyone else after it was resumed on 1/1/1963 by the State Government.

3. The tenant claimed that in the year 1980 he got the knowledge regarding the re-grant of the suit land to the original Inamdar and, therefore, on or about 3/11/1980 he gave notice to the grantee in respect of the land in Survey No.264/2. Prior to the said date Suo Motu proceedings were initiated by the ALT under Section 32G of the Tenancy Act and a notice dated 27/3/1980 was issued for hearing on 11/4/1980. These proceedings were adjourned from time to time but

on 16/8/1980 the tenant's statement was recorded and 7 x 12 extracts issued to him were taken on record. The Talathi's report dated 4/10/1980 was also received by the ALT and from the said report, for the first time, it was noticed by the ALT that,

(a) the land in Survey No.265/2 was re-granted to the landlord in 1968 and mutation entry no.7046 was effected on 26/6/1968, and

(b) the entire land in Survey No.264 admeasuring 9 acres and 11 gunthas was re-granted to the landlord Inamdar under the Tahasildar's order dated 7/10/1980.

. The Tahasildar, therefore, adjourned the proceedings from time to time and hearing had taken place on 20/5/1981 on which date the tenant's statement was again recorded and he was also cross-examined on 6/6/1981. The landlord's statement was recorded and he was cross-examined on 23/6/1981. In both these statements, the respective parties reiterated that the order of re-grant was not

communicated to them at any point of time, but the landlord admitted in his statement that the tenant was cultivating the land all along. The landlord, however, denied the claim of the tenant that the purchase notice was given by him to the landlord within the year of re-grant. The authorities below, including Maharashtra Revenue Tribunal, have rejected the claim under Section 32G of the Tenancy Act of the tenant on the following grounds:-

(a) The tenancy had commenced after the tiller's day i.e. after 1/4/1957 on account of the re-grant made in favour of the Inamdar and consequently Section 32-O of the Tenancy Act was applicable.

(b) The land in Survey No.265/2 was re-granted in 1968 and within the statutory period of one year there from the tenant did not issue a notice to the Inamdar regarding his intention to purchase the land nor he approached the ALT for initiating proceedings under Section 32G of the Tenancy Act.

(c) In respect of the land in Survey No.264/2, though the tenant had issued a notice dated 3/11/1980, the same was not signed and, therefore, it could not be held to be a valid notice though the landlord admitted that he had received the same.

4. In the impugned decision, the Maharashtra Revenue Tribunal directed a fresh inquiry in respect of the land in Survey No.264/2 so as to find out whether the notice dated 3/11/1980 was within time and if it was to be held so, the Tahasildar would proceed to fix the purchase price by holding necessary proceedings under Section 32G of the Tenancy Act. On account of this part of the order, the landlord-Inamdar is aggrieved and hence he has filed Writ Petition No.284 of 1987, whereas in the second part of the impugned order passed by the Maharashtra Revenue Tribunal, the orders passed by the SDO as well as the Special Land Acquisition Officer have been confirmed in respect of Survey No.265/2 and the tenant's claim for purchase under Section 32G of the Tenancy Act has been dismissed. Obviously, the tenant

is aggrieved by this part of the order and hence he has challenged the same in Writ Petition No.1306 of 1986.

5. The first question that arises for considerations in these petitions is, whether Section 32-O of the Tenancy Act comes into operation in the instant case? Section 32-O reads as under:-

> 32-O. Right of tenant whose tenancy is created after Tillers' day to purchase land.- (1) In respect of any tenancy created after the Tills' day by a landlord (not being a serving member of the armed forces) notwithstanding any agreement or usage to the contrary, a tenant cultivating personally shall be entitled within one year from the commencement of such tenancy to purchase from the landlord the land held by him or such part thereof as will raise the holding of the tenant to the ceiling area.
>
> (1A) A tenant desirous of exercising the right

conferred on him under sub-section (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section.

(2) The provision of sections 32 to 32N (both inclusive) and of sections 32P, 32Q and 32R in so far as they may be applicable shall apply to the purchase of the land by a tenant under sub-section (1).

. It is obvious that if the tenancy is created upto the tillers' day by a landlord notwithstanding any agreement or usage to the contrary, a tenant cultivating personally shall be entitled within one year from the commencement of such tenancy to purchase from the landlord the land held by him or such part thereof as well raise the holding of the tenant to the ceiling area and such a right will have to be exercised by giving an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period of one year. Finally the provisions of Section 32 to 32N (both inclusive) and of Sections

32P, 32Q and 32R in so far as they may be applicable shall apply to the purchase of the land by a tenant under sub-section (1). The findings recorded by the Tribunals below that the tenancy in the instant case was created after the tillers' day i.e. after 1/4/1957 are grossly erroneous and they are obviously without application of mind to the provisions of Sections 5, 6 and 8 of the Watan Abolition Acts. Section 5 deals with the re-grant of the watan land to the Watandar, whereas Section 6 provides for re-grant to authorised holder. Section 8 of the Abolition Acts which is relevant for the present considerations reads as under:-

> 8. Application of existing tenancy law.- If any watan land has been lawfully leased and such lease is subsisting on the appointed day, the provisions of the relevant tenancy law shall apply to the said lease, and the rights and liabilities of the holder of such land and his tenant or tenants shall, subject to the provisions of this part, be governed by the provisions of law:

. Provided that, for the purposes of application of the provisions of the relevant tenancy law in regard to the compulsory purchase of land by a tenant, the lease shall be deemed to have commenced from the date of the re-grant of the land under Section 5 or 9, as the case may be.

6. In the instant case the appointed day is admittedly 1/1/1963 and the tenant was in lawful cultivation of the land on that day and thus the lease was subsisting. The provisions of Tenancy Act were, therefore, applicable to decide the rights and liabilities of the tenant under the said Act. The first part of the land was re-granted in 1968 and the second portion of the land was re-granted in October, 1980. The lease was, therefore, deemed to have commenced on such re-grant for the purpose of the applications of the provisions of the Tenancy Act. This means that on re-grant the tenant was entitled to make an application under Section 32G of the Tenancy Act for purchase of the suit land and to issue the

notice to the landlord/Inamdar. The scheme of Section 8 of the Abolition Acts does not say that the lease will recommence after the land was re-granted to the Inamdar by the State Government and this has been amply made clear by the following decisions of this Court:-

(a) Kallawwa Shattu Patil and ors. vs. Yallappa Parashram Patil and anr. **(1992 Mh.L.J. 34)**.

(b) Pradeeprao @ Virgonda Shivgond Patil vs. Sidappa Girappa Hemgire through his heirs **(2004 (3) Mh.L.J. 75)**

. A three Judge bench of the Supreme Court in the case of Pandurang Dnyanoba Lad vs. Dada Rama Methe and ors. **(AIR 1976 SC 1910)** also considered the applicability of Section 32-O of the Tenancy Act on re-grant of the land under the Alienations Abolition Act and in para 6 it observed as under:-

"Section 32-O of the Tenancy Act applies only to tenancies created after the tillers' day.

> It provides that in respect of such tenancies, a tenant desirous of exercising the right of purchase must give an intimation to the landlord and the Tribunal within one year from the commencement of his tenancy. As observed by us, the relationship of landlord and tenant between the appellants and respondents did not come to an end on the introduction of the Alienations Abolition Act nor indeed is there any legal justification for the theory that on the cesser of that relationship a new relationship of landlord and tenant came into existence between the parties so as to attract the application of Section 32-O....."

7. This observation is equally applicable in the instant case in as much as the scheme of Section 8 of the Abolition Act does not indicate that there will be a fresh tenancy created on re-grant of the land to the Inamdar or the land holder. In the case of Smt. Khatun and anr. vs. Balakrishna Keshav Deshpande **(AIR 1992 SC 2197)**, by referring to the scheme of Section 28 of the Bombay Merged Territories

Miscellaneous Alienations Abolition Act, 1945, the Supreme Court stated that it does not confer any retrospective right on the landholder to claim any arrears of rent prior to the order of re-grant passed in favour of the landholder under Section 7 of the Abolition Act. There was an automatic resumption of the right of the landholder in a watan land on 3rd June, 1955 (appointed day) and he was no longer entitled to claim any rent from the tenant of such watan land till any order of re-grant was passed in favour of such landholder. The applicability of Section 32-O of the Tenancy Act was more elaborately considered by this court in Kallawwa Patil's case in the following words:-

> "The watan land was lawfully leased by the landlords, i.e. the petitioners and Respondent No.2, in favour of the 1st Respondent-tenant much prior to 1st April 1957 and the said lease was subsisting on the appointed day. The 1st Respondent was lawfully cultivating the land bearing R.S. No.182/4 throughout. Practically all the

provisions of the Tenancy Act became applicable to the lease forthwith. Merely the date of compulsory purchase and fixation of purchase price were postponed by statute, i.e. by operation of law upto the date of re-grant. In other words, the provisions for implementation of compulsory purchase of the land contained in section 32G of the Tenancy Act could not be availed of by the Respondent No.1 until the date of re-grant of the said land. In my judgment, the landlords did not create any fresh tenancy in favour of Respondent No.1 after 1st April 1957 and section 32-O of the Tenancy Act can have no application to such a case. Section 32-O of the Tenancy Act cannot apply to a case where the land was already leased by the landlords in favour of the tenant prior to 1st April 1957 and the said lease was subsisting on 1st April 1957 and it has subsisted throughout. The proviso to section 8 of the Patels Abolition Act creates a statutory legal fiction for an extremely limited purpose, i.e. for the purpose of fixing of purchase price in

respect of statutory purchase. For the said limited purpose, the land is deemed to have been leased from the date of re-grant. It does not follow therefrom that the landlords have created a lease in respect of the said land after 1st April 1957 from the re-grant. The old lease never came to an end. New contract of lease was never arrived at. Deemed date of commencement of pre-existing lease for the limited purpose set out in the proviso to section 8 of the Patels Abolition Act does not and cannot bring the case within the ambit of section 32-O of the Tenancy Act. The condition precedent prescribed by section 32-O of the Tenancy Act for its applicability is not satisfied in this case....."

. The above said observations made by this court in the case of Kallawwa Patil are squarely applicable to the case at hands and, therefore, the view taken by all the authorities below concurrently that Section 32-O of the Tenancy Act was attracted is unsustainable and is contrary to the law laid down by this court as

well as the Apex Court in the case of Pandurang Lad (Supra). The Maharashtra Revenue Tribunal referred to another decision of this court in the case of Bandu Dhanjai Ahire vs. Chatursing P. Thoke **(1973 TLR Vol.XXI - 154)** and unfortunately it failed to apply the said judgment to the instant case. In fact, it wrongly interpreted and held that the said judgment has not been followed or the requirements set out therein were not fulfilled in the instant case. In the said case this court held that the words "a lease shall be deemed to have commenced from the date of the re-grant of the land under Section 5,6 or 9, as the case may be" must be interpreted to mean "from the date of the communication of the order of re-grant not merely to the Inamdar but also to the tenants of the land".

8. Both the tenant as well as the Inamdar in the instant case stated in their statements recorded by the Tahasildar that they had not received the re-grant order and they were not aware of the same. Even the Tahasildar could not find anything from the record that the re-grant order was communicated to either of them either in the year 1968 or in the year 1980 and,

therefore, the period of one year would not have been made applicable in the instant case for giving notice to the landlord or for initiating the proceedings under Section 32G of the Tenancy Act. This court had held in Bandu Ahire's case that if the re-grant order is never communicated to the tenant, the tenant can never know that his tenancy has commenced from the date of the re-grant as laid down under the proviso to Section 8 of the Inam Abolition Act. By following this judgment it was necessary for the Maharashtra Revenue Tribunal to hold, in fact, in favour of the tenant and in any case if regards be had to the date of receipt of the 7x12 extract by the tenant i.e. 25/8/1980, it could not be said that the proceedings under Section 32G were either time barred or the tenant had forfeited his right for the statutory purchase of the land. From the record, it could be safely concluded that the tenant got the knowledge of the re-grant order after he received notice from the ALT or from the date he got the copies of the 7x12 extract and not in any case when the first piece of land was re-granted in 1968. Under these circumstances, the view taken by all the authorises in respect of the land in Survey No.265/2 is patently

erroneous and it deserves to be quashed and set aside. It was not necessary for the Maharashtra Revenue Tribunal to remand the inquiry in respect of the land in Survey No.264/2. The record was clear and once it is held that the provisions of Section 32-O of the Tenancy Act would not be applicable in the instant case, it is necessary to fix the purchase price and no investigation regarding the notice issued by the tenant would be necessary. The Tribunal ought to have directed to fix the purchase price in respect of the land in Survey No.264/2.

9. In the premises, Writ Petition No.1306 of 1986 succeeds and Writ Petition No.284 of 1987 fails. It is directed that Tahasildar and ALT, Hatkanangale shall fix the purchase price of the suit land admeasuring 5 acres and 5 gunthas and presently Block No.1017-E after hearing the parties within a period of three months from today and the tenant shall comply with the requirements of paying the purchase price within the period prescribed. The Certificate under Section 32M shall follow on remittance of the purchase price. Consequently, the impugned order passed by the Maharashtra Revenue Tribunal is hereby quashed and set

aside and Rule in Writ Petition No.1306 of 1986 is made absolute in terms of the above directions, whereas the Rule granted in Writ Petition No.284 of 1987 is hereby discharged. Parties to bear their own costs.

(B.H. Marlapalle,J.)